

OLC RECORD COPY

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MEMORANDUM FOR THE RECORD

SUBJECT: "Right to Financial Privacy Act of 1978" - Title XI of H.R. 14279, the "Financial Institution Regulatory and Interest Rate Control Act of 1978"

1. The Office of Legislative Counsel is in the process of reviewing the impact of legislation enacted in the 95th Congress on the CIA and other "Intelligence Community" agencies and departments. Subject legislation has been reviewed; what follows is a brief overview of the legislation.

2. Title XI, the "Right to Financial Privacy Act of 1978":

-- establishes guidelines and notice requirements by and under which any "'Government authority' may have access to or obtain copies of or the information contained in the 'financial records' of any 'customer' from a 'financial institution'...";

-- establishes the means by which the "Government authority" may delay notice to the "customer" by court order; and,

-- establishes the means by which the "customer" may challenge "Government authority" access to the "financial records" of a "customer."

3. Of particular note is subparagraph 1114(a)(1)(A) which exempts from the "customer" notice requirements of the act requests for the production and disclosure of "financial records" made by a "Government authority authorized to conduct foreign counter - or foreign positive intelligence activities for purposes of conducting such activities..." Accordingly, the CIA is exempt from the notice requirements; however, the following four sections are specifically named as being applicable to any of the paragraph 1114(a)(1) "Government authorit[ies]":

-- Section 1115 - "Cost Reimbursement" - to be paid to the "financial institution assembling or providing financial records pertaining to a customer...";

-- Section 1117 - "Civil Penalties" - allows for a \$100 fine in addition to any actual and punitive damages and reasonable Attorney's fees as may be awarded by a court and establishes an administrative-disciplinary remedy to be carried out through the Civil Service Commission in those cases involving violations of the act which "raise questions of whether an officer or employee of the department or agency acted willfully or intentionally with respect to the violation...";

-- Section 1118 - "Injunctive Relief" - establishes an injunctive remedy and reasonable Attorney's fees in the event of successful injunctive action; and

-- Section 1121 - "Reporting Requirements" - provides, in the first instance, that the Director of the Administrative Office of the U.S. Courts send, in April of each year, to the appropriate committees of Congress "a report concerning the number of applications for delays of notice...and the number of customer challenges made...during the preceding calendar year...," and secondly directs that each April each Government authority which requests access - including the Section 1114 "Government authorit[ies]" (CIA, FBI and the Secret Service) - "send to the appropriate committees of Congress a report describing requests made during the preceding calendar year..." to include the number of requests for records and "any other related information deemed relevant or useful by the Government authority."

4. Furthermore, pursuant to paragraph 1114(a)(2), any requests for the production and disclosure of customer financial records must be accompanied by a written certification signed by a supervisory official of rank designated by the head of the Government authority attesting to the fact that the Government authority has complied with the applicable provisions of the Act. Concomitantly paragraph 1114(a)(3) prohibits any financial institution, or officer, employee or agent of such institution from disclosing to any person the fact that a subparagraph 1114(a)(1)(A) Government authority has sought to obtain access to a customers financial records.

5. It is apparent, therefore, from the brief analytical review of the statute provided herein that while this Agency is specifically exempted from the notice requirements set forth in the "Right to Financial Privacy Act of 1978," the Agency is covered by pertinent portions of Sections 1114, 1115, 1117, 1118 and 1121 of the act which set forth procedural, remedial and reporting requirements which - by force of law - must be adhered to.

6. The question which remains to be delved into is to what extent the Agency actually has need to seek the "financial records" of U.S. persons in order to determine just how the "Right to Financial Privacy Act of 1978" may actually impact on the Agency.




Assistant Legislative Counsel

Attachments

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